

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

WILBERT HAYES,

Defendant.

DECISION AND ORDER

15-CR-29A

On August 4, 2015, defendant Wilbert Hayes (“Hayes”) filed omnibus pretrial motions, including a motion to suppress evidence obtained during a search of 1318 Walnut Avenue Upper, Niagara Falls, New York on August 15, 2014. (Dkt. No. 21 at 22.) In connection with the motion to suppress, the Court issued a Text Order on December 9, 2015. (Dkt. No. 30.) Through the Text Order, the Court made available to counsel a transcript of the warrant application hearing from Niagara Falls City Court. The Court also directed supplemental briefing from the parties as to whether the circumstances of the case warranted a suppression hearing. The Court set aside February 25, 2016 as a date for any hearing that would occur.

The parties now have filed their supplemental briefing for and against a suppression hearing. After reviewing all of the case materials to date, the Court has decided that a limited suppression hearing is warranted. The Court is satisfied from the case materials that it has enough information to issue an eventual Report and Recommendation as to whether probable cause supported

the issuance of the local court warrant. In contrast, the Court wants to conduct a limited hearing to fill certain factual gaps in the record with respect to how law enforcement agents executed the warrant on August 15, 2014. For example, the pre-indictment complaint in this case contained the following information at paragraph four:

Hayes was discovered inside of the aforementioned address during the execution of the search warrant. Hayes was taken into custody without incident and read his *Miranda* rights. Consistent with the scope of the warrant, a search was conducted at the aforementioned apartment following Hayes' arrest.

(Dkt. No. 1 at 3.) The search warrant in question (Dkt. No. 22-1) authorized the search of Hayes's person and the Walnut Avenue apartment. The warrant did not in itself authorize an arrest, nor is there any indication in the record so far that an arrest warrant accompanied the search warrant. The record thus is unclear right now as to why law enforcement agents appear to have arrested Hayes first and then conducted the search. Additionally, the search warrant in question focused on probable cause to discover marijuana and related paraphernalia. The lone count of the indictment in this case concerns possession of the shotgun that law enforcement agents found. There is no indication in the record so far that law enforcement agents found drugs on Hayes's person or anywhere in the apartment. If only to fill out the record for the sake of future objections or appeals, the Court should conduct a hearing to confirm how a search warrant for marijuana prompted an initial arrest and the seizure of a shotgun.

Accordingly, the Court will hold a suppression hearing on February 25, 2016 at 10:00 AM. The scope of the hearing will be the events of the execution of the search warrant on August 15, 2014, including but not limited to the chronology of Hayes's arrest and the discovery of the shotgun in question.

SO ORDERED.

/s/ Hugh B. Scott

HONORABLE HUGH B. SCOTT
UNITED STATES MAGISTRATE JUDGE

DATED: February 9, 2016